

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC 2002-000476

05/15/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

STATE OF ARIZONA

KEVIN D SOLIE

v.

VERNE L WATSON

NEAL W BASSETT

PHX CITY MUNICIPAL COURT
REMAND DESK-LCA-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #8708755

Charge: P.C.C. 39-16@39-7A

DOB: UNK

DOC: 01/29/02

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since oral argument on April 16, 2003. This Court has considered and reviewed the excellent memoranda submitted by counsel, the argument presented and the record of the proceedings from the Phoenix City Court. This decision is made within 30 days are required by Rule 9.8, Maricopa County Superior Court, Local Rules of Practice.

Appellant, Verne L. Watson, was charged with two violations of the City of Phoenix Neighborhood Preservation Ordinance: (1) Having an Accumulation of Garbage or Blight, in Docket Code 512

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violation of Phoenix City Code Section 39-7(A); and (2) Having a Fence not Safe or Structurally Sound, in violation of Phoenix City Code Section 39-6(B), both class 1 misdemeanor offenses. Appellant's case proceeded to a bench trial before the Honorable Michael Simonson on July 11, 2002. Appellant was found guilty of Having an Accumulation of Garbage or Neighborhood Blight, and not guilty of the other charge. Appellant was sentenced on August 22, 2002 to pay a fine of \$266.00 and serve six (6) months of probation. Appellant has filed a timely Notice of Appeal in this case.

The only issue raised on appeal is Appellant's contention that the Neighborhood Preservation Ordinance is unconstitutional because it allows prosecutors to charge violations of the Neighborhood Preservation Ordinance as either civil violations or criminal violations. Appellee responds that the Neighborhood Preservation Ordinance permits both criminal prosecutions (as a class 1 misdemeanor) and a civil suit requesting damages and injunctive relief.

Appellant's contention that the Neighborhood Preservation Ordinance is unconstitutionally vague requires that this Court review that ordinance de novo. This Court notes the strong presumption found in Arizona law that questioned ordinances are presumed to be constitutional, and the party asserting unconstitutionality has a burden of clearly demonstrating the unconstitutionality.¹ Whenever possible, a reviewing court should construe an ordinance so as to avoid rendering it unconstitutional and resolve any doubts in favor of constitutionality.² A statute is unconstitutionally vague "if it does not provide persons of ordinary intelligence reasonable notice of prohibited behavior and if it 'fails to provide explicit standards for those who apply it,' allowing for arbitrary and discriminatory enforcement."³ Due process does not require that a statute or ordinance be drafted with absolute precision.⁴ Whenever the language of a statute or ordinance is unclear, courts must strive to give it a sensible construction and, if possible, uphold the constitutionality of that provision.⁵

Appellant cites State v. Anderson⁶ for the proposition that where there is no meaningful distinction between conduct prohibited by two statutes, one statute is unconstitutionally vague to the extent that it permits conduct (stalking) to be punished as either a class 3 or class 5 felony. However, the Neighborhood Preservation Ordinance is distinguishable from the Stalking statutes discussed in Anderson, as the Neighborhood Preservation Ordinance does not contain separate and different statutes proscribing conduct punishable in differing manners. The Neighborhood Preservation Ordinance specifically permits a person to be prosecuted criminally and civilly.

¹ State v. LeFevre, 193 Ariz. 385, 972 P.2d 1021 (App. 1998); Larsen v. Nissan Motor Corporation in the United States, 194 Ariz. 142, 978 P.2d 119 (App. 1998).

² Id.

³ State v. Anderson, 199 Ariz. 187, 191, 16 P.3d 214, 218 (App. 2000), citing State v. Tocco, 156 Ariz. 116, 118, 750 P.2d 874, 876 (1988)(other citations omitted).

⁴ State v. LeFevre, supra.; State v. Takacs, 169 Ariz. 392, 819 P.2d 978 (App. 1991), citing Fuenning v. Superior Court, 139 Ariz. 590, 680 P.2d 121 (1983).

⁵ State v. Fuenning, supra.

⁶ Supra.

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Appellee correctly compares the Neighborhood Preservation Ordinance to the discretion given a prosecutor in A.R.S. Section 13-702(G) to charge as a misdemeanor offense those class 6 felonies eligible for designation as misdemeanors within that subsection. Thus, the determination whether to charge an offense as a misdemeanor or felony is within the prosecutor's discretion. Similarly, it is within the prosecution's discretion to determine whether to file criminal charges pursuant to the Neighborhood Preservation Ordinance, to seek civil sanctions against an offender pursuant to the Neighborhood Preservation Ordinance, or to do both. This Court, therefore, concludes that the City of Phoenix' Neighborhood Preservation Ordinance is not unconstitutionally vague and that persons of ordinary intelligence are provided reasonable notice of prohibited behaviors and explicit standards exists for the prosecution of those persons. More importantly, the ordinance itself clearly provides and authorizes criminal prosecution and/or civil suit, in language that a person of ordinary intelligence would easily understand.

IT IS THEREFORE ORDERED affirming Appellant's conviction and sentence.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all further and future proceedings in this case.

/S/ HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT